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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO
10/627,427	07/25/2003	David W. Plank	6273US	2338
30173	7590 03/25/2005		EXAMINER	
GENERAL MILLS, INC.			PADEN, CAROLYN A	
P.O. BOX 11 MINNEAPO	13 LIS, MN 55440		ART UNIT	PAPER NUMBER
WINVER	210, MIX 33 1.0		1761	
			DATE MAILED: 03/25/200	5

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	
	10/627,427	PLANK ET AL.	
Office Action Summary	Examiner	Art Unit	
	Carolyn A Paden	1761	
The MAILING DATE of this communication ap Period for Reply	pears on the cover sheet w	ith the correspondence address	
A SHORTENED STATUTORY PERIOD FOR REPL THE MAILING DATE OF THIS COMMUNICATION. - Extensions of time may be available under the provisions of 37 CFR 1. after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a rep. If NO period for reply is specified above, the maximum statutory period. - Failure to reply within the set or extended period for reply will, by statut Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	136(a). In no event, however, may a sly within the statutory minimum of thin will apply and will expire SIX (6) MOI en cause the application to become A	reply be timely filed ty (30) days will be considered timely. ITHS from the mailing date of this communication. BANDONED (35 U.S.C. § 133).	
Status			
 Responsive to communication(s) filed on <u>07 F</u> This action is FINAL. Since this application is in condition for alloward closed in accordance with the practice under 	s action is non-final. ance except for formal mat		
Disposition of Claims			
4) ⊠ Claim(s) <u>1-13,17-22 and 27-30</u> is/are pending 4a) Of the above claim(s) is/are withdra 5) ⊠ Claim(s) <u>11,12,17 and 21</u> is/are allowed. 6) ⊠ Claim(s) <u>1-10,13,18-20 and 27-30</u> is/are reject 7) □ Claim(s) is/are objected to. 8) □ Claim(s) are subject to restriction and/or	ewn from consideration.		
Application Papers			
9) The specification is objected to by the Examin 10) The drawing(s) filed on is/are: a) acc Applicant may not request that any objection to the Replacement drawing sheet(s) including the correct 11) The oath or declaration is objected to by the Examin	cepted or b) objected to or by or or by or by or or by or or by or	nce. See 37 CFR 1.85(a). (s) is objected to. See 37 CFR 1.121(d).	
Priority under 35 U.S.C. § 119			
 12) Acknowledgment is made of a claim for foreign a) All b) Some * c) None of: 1. Certified copies of the priority document 2. Certified copies of the priority document 3. Copies of the certified copies of the priority document * See the attached detailed Office action for a list 	its have been received. Its have been received in A prity documents have beer au (PCT Rule 17.2(a)).	Application No received in this National Stage	
Attachment(s) 1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08 Paper No(s)/Mail Date	Paper No	Summary (PTO-413) s)/Mail Date nformal Patent Application (PTO-152) 	

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6-10, 13, 18-20, 22 & 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Qi in view of Baileys for reasons of record.

Applicant argues that Qi fails to teach mixing cyclodextrin with oil in an amount effective to thicken the fat or oil and that Qi only uses a small amount of cyclodextrin in his product. The argument has been considered but is not persuasive. Firstly, applicant argues process limitations that do not carry any weight in product claims. Secondly the product claims only require a very small amount of cyclodextrin. The fact that Qi does not disclose the viscosity of the product is not seen to carry any patentable weight because the ratio of the ingredients appears to be the same.

Applicant has amended the claims to include hydrated cyclodextrin but Qi hydrates his cyclodextrin by adding water to it in example 1.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Qi in view of Swern as applied to claims 1-3, 6-10, 13,

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18-20, 22, 27-30 are above, and further in view of Takada for reasons of record.

Applicants' arguments are directed to the concept of thickening the composition and this argument was discussed above.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Roderbourg in view of Swern for reasons of record.

Applicant argues that Roderbourg was not intended for food use.

This argument has been considered but is not persuasive because the intended use of a product does not alone carry any patentable weight.

Applicant also argues that Baileys does not teach thickened fat. But Baileys is relied upon to provide evidence of the lack of trans from natural fat. Although the aspect of thickening the composition is not specifically mentioned in Roderbourg, the composition is clearly thickened because the cooled mixture is "churned" a low temperatures (column 6, line 30). Clearly the mixture has thickened because it must be churned as opposed to simple mixing.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-8, 10, 13, 18, 19, 22, 27, 28 & 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Saito as further evidenced by Baileys and also as further evidenced by Giordano.

Applicant argues that Saito does not contemplate preparing a thickened oil or fat but rather is processing the product into a tablet. This has been considered but is not persuasive because a tablet is certainly thicker than liquid oil. Applicant has amended the claims to suggest a hydrated cyclodextrin but cyclodextrin is typically marketed in its hydrated form as shown by Giordano. Thus one of ordinary skill in the art would expect that the Saito cyclodextrin was hydrated at the time it was purchased.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, 6-8, 10, 13, 18, 19, 22, 27, 28 & 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito as further evidenced by

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Baileys for reasons of record used in rejecting the claims under 35 USC 102 in the last office action and as further evidenced by Giordano or Maggi.

The claims appear to differ from Saito in the recitation that the cyclodextrin is hydrated cyclodextrin but cyclodextrin is typically marketed in its hydrated form as shown by Giordano. Thus one of ordinary skill in the art would expect that the Saito cyclodextrin was hydrated at the time it was purchased. If this argument is not sufficient, further evidence is provided by Maggi, who shows hydrating cyclodextrin by adding water and also shows that both hydrated and non-hydrated cyclodextrin show use in forming tablets. Thus with the references before him, one of ordinary skill in the art would have expected that the Saito tablet could contain hydrated cyclodextrin as an obvious variant of cyclodextrin. Applicant argues that Saito does not contemplate preparing a thickened oil or fat but rather is processing the product into a tablet. This has been considered but is not persuasive because a tablet is certainly thicker than liquid oil.

Applicants' response to the Plank rejection under 35 USC 103 and under obviousness-type double patenting is sufficient to overcome the rejections. Also examiner appreciates applicants' complete response to the requirement for restriction.

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Claims 11, 12, 17 & 21 are allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

arolyn RADEN 3-18-05